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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,560	03/29/2004	Nessim N. Isa	1305-01	8295
23477	7590	10/03/2005	EXAMINER	
MARKS & CLERK 1075 NORTH SERVICE ROAD WEST SUITE 203 OAKVILLE, ON L6M 2G2 CANADA			TOWA, RENE T	
		ART UNIT	PAPER NUMBER	
		3736		
DATE MAILED: 10/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/810,560	ISA, NESSIM N.
	Examiner	Art Unit
	Rene Towa	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 29 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/29/04</u> .	6) <input type="checkbox"/> Other: _____. 

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

On page 2, at line 10, "collect" should read --collected--.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 7-8 are objected to because of the following informalities:

On lines 1-2, "collector" should read --collection means--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the collection means" in line 4. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by McLucas (US Patent No. 5,348,023).

McLucas discloses curettings receiver 10 comprising:

an elongate handle 14 having a longitudinal axis;

collection means 12 capable of collecting and retaining curettings, attached to said handle 14, at a proximate end of said collection means 12, and wherein said

collection means 12 has a circumferential edge which is smooth (see fig. 1);

wherein said collection means 12 has a concave, spoon shape;

wherein said receiver is fabricated from stainless steel (see column 2/lines 63-65).

Examiner notes that eliminating the blunt circumferential edge (element) of a typical curette for cutting or scraping (function) does not render the claim patentable since it has been held that eliminating an element and its function is not patentable (see *In re Karlson*, 311 F.2d 581, 583; 136 USPQ 184, 186 (CCPA 1963); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975)).

7. Claims 1-2 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ocel et al. (US Patent No. 4,044,770).

Ocel et al. disclose a curettings receiver 10 comprising:

an elongate handle 11 having a longitudinal axis;

collection means 15 for collecting and retaining curettings, attached to said handle 11, at a proximate end of said collection means 15, and wherein said collection means 15 has a circumferential edge which is smooth to avoid cutting or scrapping (see fig. 1);

wherein said collection means 15 has a concave, spoon shape;

wherein said receiver 15 is fabricated from stainless steel; wherein the receiver 10 is fabricated from a plastic material that can be discarded after use (see column 2/lines 35-46).

8. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Holmes (US Patent No. 6,949,108).

Holmes discloses a curettings receiver 10 comprising:

an elongate handle 20 having a longitudinal axis;

collection means 14a for collecting and retaining curettings, attached to said handle 20, at a proximate end of said collection means 14a, and wherein said collection means 14a has a circumferential edge which is smooth (see fig. 2);

wherein said collection means 14a has a concave, spoon shape.

9. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Crandell et al. (US Patent No. 3,277,714).

Crandell et al. disclose a receiver comprising:

an elongate handle 20 having a longitudinal axis;

collection means 10 capable of collecting and retaining endocervical curettings, attached to said handle 20, at a proximate end of said collection means 10, and

wherein said collection means 10 has a circumferential edge which is smooth and capable of avoiding cutting or scrapping of the cervical area (see fig. 1);

wherein said collection means 10 has a concave, spoon shape;

wherein said collection means 10 has a truncated end at a distal end of said collection means 10;

wherein said receiver is fabricated from stainless steel; wherein said receiver is fabricated from a plastic material that can be discarded after use (see column 4/lines 55-60).

10. Claims 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kresch et al. (US Patent No. 5,527,331).

Kresch et al. disclose a method for obtaining tissue from inside a living body, the method comprising the steps of:

inserting a curette P having sharp cutting edges 21 inside a body,

inserting the collection means 16 of an endocervical currettings receiver inside the body, and positioning said receiver 16 adjacent to said curette P, wherein said receiver 18 comprises an elongate handle having a longitudinal axis; collection means for retaining said endocervical curetttings, attached to said handle, at a proximate end of said collection means, wherein said collection means preferably has a concave, spoon shape, and has a truncated end at a distal end of said collection means; and said collection means has a circumferential edge which is smooth to avoid cutting or scrapping of the cervical area;

moving said inserted curette P to cause one or more cutting edges 21 on said curette to cut tissue from the body;

placing or collecting said cut tissue within the collection means 16; and  
withdrawing said curette P and said collection means 16 from the body (see figs. 3A-B, 4-5; column 4/lines 33-47);

wherein said collector 18 of said endocervical curettings receiver 16 is at least twice the size (in volume), of a collector section 25 formed as part of the curette P;

wherein said collector 18 is between 5 and 20 times the size (in volume), of a collector section 25 formed as part of the curette (see fig. 2A).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,117,822 to Laghi discloses a heart comprising a smooth circumferential outer edge.

US Patent No. 6,080,118 to Blythe discloses a vaginal probe having a handle and a circumferentially smooth outer edge.

US Patent No. 5,586,989 to Bray, Jr. discloses a microsurgical curette including a shaft and a spoon-shaped tip.

US Patent No. 6,632,233 to Burgard discloses a resection instrument comprising a spoon-shaped, trough-like longitudinal section.

US Patent No. 4,800,896 to Jalowayski discloses a sample cell collector probe comprising a handle and a cup.

US Patent No. 2,751,683 to Johns discloses a baby spoon comprising a handle and cup.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rene Towa whose telephone number is (571) 272-8758. The examiner can normally be reached on M-F, 8:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RTT

  
MAX F. HINDENBURG  
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